

N.D.A.G. Letter to Brovold (Sep. 2, 1987)

September 2, 1987

Mr. Jay V. Brovold
Billings County State's Attorney
P.O. Box 187
Medora, ND 58645

Dear Mr. Brovold:

Thank you for your letter of July 7, 1987. I apologize for the delay in responding.

As you know, Congress is invested by the federal Constitution with the power of disposing of and making needful rules and regulations respecting property belonging to the United States. It not only has a legislative power over the public domain, but it also exercises the powers of the proprietor therein. Congress may deal with such lands precisely as a private individual may deal with his property. Furthermore, the power of Congress over the public domain cannot be interfered with by state legislation, although in some respects police power of the state extends over the federal public domain, at least when there is no legislation by Congress on the subject. See 63 Am. Jur.2d Public Lands §§ 12, 14 (1984).

N.D.C.C. § 63-01.1-08 provides that landowners in the state of North Dakota are financially responsible for weed control on their lands and when they fail or refuse to control weeds, the weed board may levy a fine which becomes a lien against the land. Nevertheless, it is my opinion that N.D.C.C. § 63-01.1-08 cannot be applied to federal landholders. Rather, N.D.C.C. § 63-01.1-13, is a better indication of the state's power with regard to federal control of noxious weeds on their lands. That statute states, in part, as follows:

63-01.1-13. PUBLICLY OWNED LAND -- WEED CONTROL. The commissioner shall make every effort possible to arrange a satisfactory noxious weed eradication or control program with all state and federal agencies owning, controlling, or having jurisdiction over land within the state. . . .In the event that agencies coming within the provisions of this section shall fail or refuse to eradicate or control noxious weeds in accordance with this section, the commissioner may hold a public hearing under such conditions and terms as he shall deem advisable, to determine the reason for such failure or refusal.

It is the experience of the Department of Agriculture (the Commissioner of Agriculture is the state control authority -- see N.D.C.C. §§ 63-01.1-02(3), 63-01.1-03), that the federal government wishes to cooperate in noxious weed control on public lands. However, the noxious weed problem has exceeded the amount of federal dollars available to control it. Of course, this has often been the situation in both the public and private sector. In fact,

the Department of Agriculture informs us that the National Park Service has, for all practical purposes, eliminated from their budget all weed control moneys. The Department of Agriculture still works with many federal agencies, however, and some of them are very cooperative in weed control throughout the state.

Finally, in regard to public lands, the private lessee is not obligated to control the weeds under North Dakota weed law since the remedial requirements for weed control that can be imposed under N.D.C.C. § 63-01.1-08 are for the landowner, not the lessee. However, a lessee may obligate himself to weed control via agreement with any public landholder. Additionally, an action for waste against the private lessee may be possible. See N.D.C.C. § 32-17-22.

In regard to state lands, N.D.C.C. 63-01.1-13 states, in part, as follows:

State agencies controlling or having jurisdiction over lands within the state shall provide for eradication and control of noxious weeds on such lands. In the event that agencies coming within the provisions of this section shall fail or refuse to eradicate or control noxious weeds in accordance with this section, the commissioner may hold a public hearing under such conditions and terms as he shall deem advisable to determine the reason for such failure or refusal.

Therefore, in regard to both state and federal agencies, the Commissioner can put considerable pressure on the agencies by holding a public hearing for the purposes of determining why noxious weed control efforts have not taken place.

Further, N.D.C.C. § 63-01.1-13.1 specifically requires the North Dakota Game and Fish Department to control noxious weeds on their land. County weed boards, upon the failure of the Game and Fish Department to control noxious weeds, may do so on state game and fish lands, and must be reimbursed by the State Game and Fish Department upon adequate certification that expenditures have been made for noxious weed control.

In the final analysis, noxious weed control on both state and federal public lands is only going to occur when Congress and state legislatures provide adequate funding for control. I know of no way, outside of the provisions of N.D.C.C. § 63-01.1-13.1, that public landholders can be forced to pay for noxious weed control. You may wish to talk to North Dakota's congressional delegation, as well as your local state legislators, about the apparent lack of funding for weed control efforts on public lands in North Dakota.

Sincerely,

Nicholas J. Spaeth

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